

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION No. 060/00551/2014**

**Date of filing: 03.07.2014  
Order reserved on: 26.07.2016**

**Chandigarh, this the 1st day of <sup>August</sup> ~~July~~, 2016**

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**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &  
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

...

Manjit Kaur wife of Sh. Charanjeet Singh Associate Professor,  
Department of English, Post Graduate Government College for Girls,  
Sector 42, Chandigarh.

BY ADVOCATE: SHRI K.K. GUPTA

....APPLICANT

VERSUS

1. Union of India through its Secretary, Ministry of Human Resources Development, Government of India, New Delhi.
2. Union Territory Chandigarh through its Administrator;
3. Secretary Education, Chandigarh Administration, Chandigarh.
4. Director, Higher Education, Chandigarh Administration, Chandigarh.
5. Prof. Jagdish Sehgal, Vice Principal, Post Graduate Government College, Sector 46, Chandigarh.
6. Prof. Sneh Sharma, resident of H. No. 558, Sector 48-A, Chandigarh, working in the Post Graduate Government College, Sector 46, Chandigarh.

....RESPONDENTS

BY ADVOCATE: SHRI ROHIT MITAL PROXY COUSNEL FOR RESPONDENTS  
NOS. 1-4  
SHRI H.S. SETHI COUNSEL FOR RESPONDETNS NOS. 5  
& 6.

29

**ORDER****HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-**

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, applicant Manjit Kaur has claimed the following relief:

- " (i) Quash the orders dated 3.2.2012, Annexure A-10, by which representation of the applicant for restoration of her seniority w.e.f. 5.7.1983 instead of 2.12.2003 has been rejected and this order dated 3.2.2012 is under review and no decision has been communicated to the applicant in review petition of the applicant despite personal hearing granted on 12.07.2013 as per Annexure A-12;
- (ii) Issue directions to the respondents to mention the original seniority of the petitioner from the initial date of joining i.e. 5.7.1983 and not 2.12.2003 when she has been allowed to rejoin the duty in the exceptional circumstances;
- (iii) Quash the order Annexure A-1 to the extent of changing the seniority which provision is repugnant to the basic provisions of the Punjab Civil Service Rules as applicable to UT employees.
- (iv) Direct the respondents to grant all consequential relief as a result of change of date of appointment in the seniority w.e.f. 5.7.1983."

During the course of hearing, counsel for the applicant stated that in sub-para (iii) above, 'Annexure A-1' be read as 'Annexure A-3'.

2. Shorn of unnecessary details, the case of the applicant is that she joined as Lecturer in English with the respondents on 5.7.1983. Due to her family circumstances, she tendered resignation on 16.4.1999. It was accepted on 8.6.1999. Period from 12.3.1998 to

8.6.1999 (till before acceptance of her resignation) was treated as Extra Ordinary Leave (EOL). On change of her circumstances, she submitted representation dated 26.3.2001 for withdrawal of resignation and for rejoining her job which was permissible under the rules and instructions. Getting no response, she filed O.A. NO. 817/PB/2001 which was disposed of by order dated 29.8.2001 (Annexure A-1). Pursuant thereto, the applicant submitted detailed representation dated 10.9.2001. It was rejected vide order dated 1.2.2002 (Annexure A-2) by Education Secretary. The applicant submitted Review Petition against this order before the Administrator who vide order dated 28.10.2003 (Annexure A-3) allowed the applicant to rejoin service subject to the conditions that the period for which she remained out of service shall be treated as EOL under Rule 8.121 of the Punjab Civil Services Rules, Vol. 1 Part-I and that she will be placed below all the employees in the cadre for the purposes of her seniority. This latter part of order (Annexure A-3) regarding placing of the applicant below all the employees in the cadre for the purposes of seniority is under challenge in this O.A. Order (Annexure A-3) was passed on the basis of instructions dated 31.7.1998 (Annexure A-4) which were issued by respondents pursuant to instructions dated 11.6.1998 of the Punjab Govt. The applicant accordingly rejoined service on 2.12.2003.

3. Case of the applicant is that she could not be placed at the bottom of all the employees in the cadre for the purposes of seniority when the break in service has been regularized by treating the said period as EOL. She is entitled to seniority w.e.f. her initial date of appointment i.e. 5.7.1983 instead of 2.12.2003 (the date of her

rejoining the service) as is being shown by the respondents in the tentative seniority list. Her representation against the draft seniority list has been rejected vide order dated 3.2.2012 (Annexure A-10). She filed review application against it, pursuant to which she was granted personal hearing on 12.7.2013, but no further decision was communicated to her.

4. Official respondents 1 to 4 in their written statement, while not disputing the factual position, pleaded that action and impugned orders of the respondents are legal and valid. The applicant has been rightly placed below all the employees in the cadre for the purposes of seniority as per instructions dated 31.7.998 (Annexure A-4) under which the applicant was permitted to rejoin service. This condition is also stipulated in order dated 28.10.2003 (Annexure A-3). It was also pleaded that the O.A. is barred by limitation. Grounds pleaded by the applicant in support of her claim were controverted.

5. Private respondents 5 & 6 were impleaded as party to the O.A. on applications filed by them. In their written statement, they also took similar stand as that of official respondents 1 to 4. They also pleaded that instructions dated 31.7.1998 (Annexure A-4) have not been assailed in the O.A. and, therefore, the applicant is not entitled to the relief claimed.

6. The applicant filed rejoinders wherein she controverted the stand of the respondents and reiterated her own version.

7. We have heard counsel for the parties and perused the case file.

32

8. Counsel for the applicant, after narrating the history of the case in detail, contended that the date of joining of service of the applicant has been depicted to be 5.7.1983 in experience certificate and other documents (Annexures A-13 to A-16) and she has also been granted higher pay-scale and other benefits accordingly and, therefore, her seniority has to be counted as per length of her service w.e.f. 5.7.1983 (the initial date of her joining the service) and not from 2.12.2003 (the date of her rejoining the service). It was submitted that instructions dated 31.7.1998 (Annexure A-4) and order dated 28.10.2003 (Annexure A-3) placing the applicant below all the employees in the cadre for the purposes of seniority on her rejoining on 2.12.2003 are illegal and void to that extent being contrary to the service rules according to which length of service is the sole criterion for determining the seniority. In this context, it was also mentioned that break period from 9.6.1999 to 1.12.2003, during which she remained out of service after acceptance of her resignation, has been treated as EOL and, therefore, status quo ante w.e.f. her date of initial appointment has been restored. Counsel for the applicant also cited judgment of Hon'ble Supreme Court in 2015 (2) SCC 170 - 'State of Punjab VS. Anita and Others', judgment of Gujarat High Court in 2012 LIC 3073 - 'Pradipbhai Vitthalbhai Tadvi vs. State of Gujrat & Anr.' and judgment of Delhi High Court in 2012 (1) SLR 687 - 'Radhika Bahl vs. Union of India and Another'.

9. On the other hand, counsel for respondents contended that the O.A. is hopelessly barred by limitation because impugned order dated 28.10.2003 (Annexure A-3) could be challenged within one year, but has now been challenged by filing this O.A. on 03.07.2014. It was also

submitted that order (Annexure A-3) was accepted by the applicant and pursuant thereto, she rejoined the service and, therefore, she is now estopped from challenging the same. It was also contended that the applicant herself had given representation for rejoining the service as per instructions dated 31.7.1998 (Annexure A-4) and, therefore, she cannot challenge the same. It was also pointed out that in fact instructions dated 31.7.1998 (Annexure A-4) have not even been challenged in the O.A. and, therefore, the applicant does not deserve the relief claimed by her. Seniority of the applicant has been fixed as per order dated 28.10.2003 (Annexure A-3) and instructions dated 31.7.1998 (Annexure A-4). It was also argued that except instructions (Annexure A-4), there was no provision in the service rules to permit the applicant to rejoin the service after acceptance of her resignation and, therefore, instructions (Annexure A-4) under which the applicant was permitted to rejoin the service cannot be repudiated by her. Counsel for respondents 5 and 6 also pointed out that if the aforesaid condition of seniority had not been stipulated in order (Annexure A-3), respondents 5 and 6 would have challenged the said order of permitting the applicant to rejoin service by placing her above the private respondents by granting her seniority from initial date of appointment.

10. We have carefully considered the matter. We find considerable merit in the contentions raised by counsel for respondents and find no substance in the contentions raised by counsel for applicant. Order (Annexure A-3) dated 28.10.2003 could be challenged by filing O.A. within one year thereof i.e. upto 28.10.2004 or at best up to 2.12.2004 taking one year limitation period from the date of rejoining

34

of the applicant on 2.12.2003 pursuant to order (Annexure A-3). However, the instant O.A. has been filed on 3.7.2014 i.e. after delay of more than nine and half years after excluding the period of limitation of one year. Even no application for condoning the said long and inordinate delay in filing the O.A. has been filed nor there is any ground whatsoever to condone the said delay. The O.A. is thus hopelessly barred by limitation and deserves to be dismissed on this ground.

11. In addition to the aforesaid, instructions dated 31.7.1998 (Annexure A-4) have not been challenged in the O.A. The condition of seniority in order (Annexure A-3) has been incorporated strictly according to instructions (Annexure A-4). Consequently, so long there is no challenge to instructions (Annexure A-4), the applicant also cannot challenge the aforesaid condition regarding her seniority incorporated in impugned order (Annexure A-3).

12. The applicant is also estopped from claiming the relief sought by her. The applicant herself claimed relief of rejoining the service on the basis of instructions dated 31.7.1998 (Annexure A-4). Consequently, she cannot turn around to repudiate the said instructions qua the condition of seniority. Moreover, the said condition was incorporated in impugned order (Annexure A-3). Accepting the said order including the said condition, the applicant rejoined the service and never repudiated the said condition for more than 10 years till filing the instant O.A. Even otherwise, counsel for the applicant could not refer to any provision in the service rules which could permit the applicant to rejoin service after her resignation had been accepted and implemented.



35

She could be and was permitted to rejoin service only on the basis of instructions dated 31.7.1998. She was entitled to this relief only subject to the conditions stipulated in the said instructions. Consequently, she cannot take benefit of the said instructions for rejoining the service and also repudiate the said instructions qua condition of seniority. These instructions are a composite package for rejoining of service after acceptance of resignation subject to the conditions stipulated in the said instructions. The said package has to be taken as a whole.

13. It is thus apparent, that the applicant is being given seniority as per condition stipulated in instructions (Annexure A-4) and order (Annexure A-3), benefit whereof she has availed. Consequently, there is no infirmity much less illegality in the impugned action of the respondents.

14. Contention of counsel for applicant that condition regarding seniority in instructions (Annexure A-4) is bad being contrary to service rules cannot be accepted because provision in the said instructions to permit the women employees to rejoin service after acceptance of resignation is also contrary to service rules and, therefore, the very rejoining of the applicant in service would be bad. Moreover, condition in instructions (Annexure A-4) regarding seniority is not contrary to the service rules. The instructions say that women employees can rejoin their service if any vacancy is available and she will be placed below all the employees in the cadre for the purposes of seniority. Thus for the purpose of seniority, it is fresh appointment subject to available of vacancy. However, benefit of past service is



given for the purpose of protection of pay, pension, experience etc. For the same reason, documents (Annexures A-13 to A-16), relied on by counsel for the applicant to show that her date of appointment is depicted to be 5.7.1983, do not help the applicant in any manner because for the purpose of experience, pay protection etc., her date of initial appointment shall remain valid, but for the purpose of seniority, her date of rejoining, the service has to be taken into consideration.


15. Judgments cited by the counsel for the applicant are not applicable to the facts of the instant case. In the case of Anita & Others (Supra), Hon'ble Supreme Court has held that Govt. instructions contrary to statutory rules cannot be relied on. However, in the instant case, the applicant herself relied on instructions dated 31.7.1998 (Annexure A-4) for rejoining the service. She cannot be permitted to approbate and reprobate to contend that condition in the said instructions regarding seniority is bad. On the other hand, provision in the said instructions whereby the applicant was permitted to rejoin the service would also be bad being contrary to service rules and, therefore, the very rejoining of the applicant in service would become bad in law. In the case of Pradipbhai Vitthalbhai Tadvi (Supra), there was break of only 5 days which was condoned by the authorities. However, in the instant case, the applicant remained out of service since 9.6.1999 till 1.12.2003 and the said period was treated as EOL subject to the condition that on rejoining service, she shall be placed below all the employees in the cadre. Consequently, grant of EOL for the said break period was subject to the aforesaid condition and was not unconditional. In the case of Radhika Bahl (Supra), the petitioner prayed for withdrawing her resignation within

31

the period permissible under the service rules. It was noticed that her seniority had to be restored from the original date because there was no provision in the service rules for loss of seniority on withdrawal of resignation within the period stipulated in the rules. In the instant case, however, the applicant was permitted to rejoin service, not under the service rules, but under instructions dated 31.7.1998 (Annexure A-4) and the said instructions stipulate that on rejoining, the employees shall be placed below all the employees in the cadre. Thus the judgments cited by counsel for the applicant are of no help to the applicant.

16. As a necessary upshot of the discussion aforesaid, we find no merit in the instant O.A., which is accordingly dismissed with no order as to costs.

  
(JUSTICE L.N. MITTAL)  
MEMBER (J)

  
(UDAY KUMAR VARMA)  
MEMBER (A)

Dated: 01.08.2016  
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